



Management of Cultural Resources at Department of Energy Facilities

BACKGROUND:

The Department of Energy (DOE) recognizes the cultural and scientific value of the resources that may exist on the properties under its management or over which it has direct or indirect control. Therefore, DOE has implemented a program to protect these resources and ensure that all DOE facilities and programs comply with all existing cultural resource Executive orders (E.O.), laws, and regulations. Thus, DOE is able to preserve, protect, and perpetuate cultural resources for future generations.

STATUTES:

Antiquities Act of 1906
Historic Sites Act of 1935
Reservoir Salvage Act of 1960 (also known as Archaeological Recovery Act of 1960)
National Historic Preservation Act of 1966, as amended (NHPA)
National Environmental Policy Act of 1969
Archaeological and Historic Preservation Act of 1974
American Folklife Preservation Act of 1976
American Indian Religious Freedom Act of 1978 (AIRFA)
Archaeological Resources Protection Act of 1979, as amended (ARPA)
Abandoned Shipwreck Act of 1987
Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)

EXECUTIVE ORDERS

Executive Memorandum. Government-to-Government Relations with Native Americans Tribal Governments (April 29, 1994)
E.O. 13007, *Indian Sacred Sites* (May 24, 1996)
E.O. 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000) (superseded EO 13084 of the same title)
E.O. 13287, *Preserve America* (March 3, 2003)

REGULATIONS:

36 CFR part 60: National Register of Historic Places
36 CFR part 63: Determinations of Eligibility for Inclusion in the National Register of Historic Places
36 CFR part 65: National Historic Landmarks Program
36 CFR part 67: The Secretary of the Interior's Standards for Rehabilitation
36 CFR part 68: The Secretary of the Interior's Standards for the Treatment of Historic Properties
36 CFR part 78: Waiver of Federal Responsibilities under Section 110 of the National Historic Preservation Act
36 CFR part 79: Curation of Federally-Owned and Administered Archeological Collections
36 CFR part 800: Protection of Historic Properties
43 CFR part 7: Protection of Archaeological Resources
43 CFR part 10: Native American Graves Protection and Repatriation Regulations

REFERENCES:

U.S. Department of Energy

Office of Air, Water and Radiation Protection Policy and Guidance (EH-41) Information Brief. *State and Tribal Historic Preservation Officers*. DOE/EH-412-0007r. Revised February 2006.

Office of Air, Water and Radiation Protection Policy and Guidance (EH-41) Information Brief. *Archaeological Resources Protection Act*. EH-232-0004/0193r. Revised February 2006.

Office of Air, Water and Radiation Protection Policy and Guidance (EH-41) Information Brief. *National Historic Preservation Act*. DOE/EH-412/0002r. Revised February 2006.

Office of Congressional and Intergovernmental Affairs. *American Indian and Alaska Native Tribal Government Policy*.¹ January 2006.

Office of Air, Water and Radiation Protection Policy and Guidance (EH-41) Information Brief. *Consultation with Native Americans*. DOE/EH-41-0019/1204. December 2004.

Office of Environment, Safety and Health. *Environmental Guidelines for Development of Cultural Resource Management Plans—Update*. DOE G 450.1-3. September 22, 2004.

Office of Air, Water and Radiation Protection Policy and Guidance (EH-41) Memorandum and Summary. *Amendments to Section 106 Regulations of the National Historic Preservation Act*. July 27, 2004.

Office of Environment, Safety and Health. *Department of Energy Management of Cultural Resources*. DOE P 141.1. May 2, 2001.

Office of Intergovernmental and Public Accountability (EM-11). *A Guide for DOE Employees. Working with Indian Tribal Nations*.² December 2000.

Office of Environmental Guidance (EH-232)³ Memorandum. *National Historic Preservation Act Amendments of 1992*. August 26, 1993.

Office of Environmental Guidance (EH-232)³ Memorandum. *The Native American Graves Protection and Repatriation Act*. July 30, 1992.

Office of Congressional and Intergovernmental Affairs. *American Indian Tribal Government Policy*.⁴ DOE Order 1230.2. April 4, 1992.

Office of Environmental Guidance (EH-231)³ Memorandum. *Management of Cultural Resources at Department of Energy Facilities*. February 23, 1990.

U.S. Department of Interior, National Park Service

Illustrated Guidelines for Rehabilitating Historic Buildings. 2001.

The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act. April 24, 1998 (63 FR 20495)

Weeks, Kay D. and Anne E. Grimmer. *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*. 1995.

National Register Bulletin Number 38: Patricia L. Parker and Thomas F. King. *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. 1990.

Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines.⁵ September 29, 1983 (48 FR 44716).

¹This policy is implemented by DOE Order 1230.2. It replaces the 1992 Policy that was Attachment 1 to that Order.

²The DOE American Indian Policy included as Appendix 3 in this document is the 1992 Policy that has been replaced by the January 2006 Policy referenced above.

³Currently known as the Office of Air, Water and Radiation Protection Policy and Guidance (EH-41).

⁴The policy contained in Attachment 1 to this DOE Order was replaced by the *American Indian and Alaska Native Tribal Government Policy* of January 2006. The Order itself is still in effect and implements that policy.

⁵The National Park Service has updated portions of the Standards and Guidelines but has not republished them since 1983. An updated version of the 1983 document is available on the NPS web site.

Definition of Cultural Resources

Cultural resources include “historic properties” as defined in the National Historic Preservation Act (NHPA), “archaeological resources” as defined in the Archaeological Resources Protection Act (ARPA), and “cultural items” as defined in the Native American Graves Protection and Repatriation Act (NAGPRA).

Cultural resources, thus, include, but are not limited to, the following broad range of items and locations:

- archaeological materials (i.e., artifacts) and sites that date to the prehistoric, historic, and ethnohistoric periods that are currently located on, or are buried beneath, the ground surface;
- standing structures and/or their component parts that are over 50 years of age or are important because they represent a major historical theme or era (e.g., the Manhattan Project, the Cold War);
- structures that have an important technological, architectural, or local significance;
- cultural and natural places, select natural resources, and sacred objects that have importance for Native Americans; and
- American folklife traditions and arts.

DOE’s Policy on Management of Cultural Resources

Preservation and protection of America’s cultural heritage are important functions and responsibilities of DOE for properties under its control or jurisdiction. Federal laws and regulations require DOE to identify, evaluate, and manage such cultural resources. DOE’s policy on management of cultural resources (DOE P 141.1) ensures that DOE maintains a program that reflects the spirit and intent of the cultural resources legislative mandates. The purpose of the policy is twofold:

- to guarantee that DOE programs, including the National Nuclear Security Administration (NNSA), and field elements integrate management of cultural resources into their missions and activities and
- to raise the level of awareness and accountability among DOE contractors (including those of the NNSA) concerning the importance of DOE’s cultural resource-related legal and trust responsibilities.

DOE also has an *American Indian and Alaska Native Tribal Government Policy*, implemented by

DOE Order 1230.2. This policy, revised most recently in 2006, sets forth the principles to be followed by DOE to effectively implement a government-to-government relationship with American Indian and Alaska Native tribal governments. (See the EH-41 Information Brief, *Consultation with Native Americans*.)

Obtaining Information about the Management of Cultural Resources

Information concerning the cultural resources that may exist on DOE facilities, including those administered by the NNSA, or on properties that may be affected by DOE programs can be obtained by contacting the DOE Cultural Resources Point of Contact in the appropriate DOE Operations Office. Additional information can be obtained by contacting the DOE Federal Preservation Officer (FPO); the State Historic Preservation Officer (SHPO) in each state or territory; local historical organizations; the Tribal Historic Preservation Officer (THPO), American Indian tribes, and other Native American organizations; or the Advisory Council on Historic Preservation (ACHP).

Protecting Cultural Resources on DOE Property

Cultural resource management laws and their implementing regulations require operators of facilities owned by or leased from DOE to develop programs for the identification, evaluation, nomination, and protection of cultural resources. The operators of such facilities are also required to mitigate negative impacts to those resources located on the properties under their management. DOE programs providing permits and/or allocating funding for activities that may affect cultural resources on non-DOE owned land are also required to comply with all cultural resource management laws and regulations.

DOE facility and program managers must consult the SHPO in their state concerning specific compliance requirements and cultural resource preservation planning. In some cases consultation may also be required with the ACHP, THPO, appropriate local historical organizations, affected stakeholders, and/or Native American tribes and organizations. The 1992 amendments to NHPA expanded the role of Native Americans, including Native Hawaiians, in preservation activities. To ensure appropriate interactions with Native Americans that may be impacted by the Department’s activities, DOE Order 1230.2

delineates the specific responsibilities of various Headquarters and field elements.

DOE's Cultural Resource Management Program

A consolidated, proactive DOE cultural resource management plan (CRMP) that is responsive to cultural resource laws and implementing regulations should be developed and implemented at each DOE facility and for each DOE program, including NNSA. The responsible DOE managers must ensure that the following cultural resource management requirements are met:

- Prepare a CRMP that identifies the individual facility or program strategies for meeting the program elements described below. Follow the guidance in DOE G 450.1-3 when preparing and making periodic revisions to this plan.
- Employ professionally trained cultural resource management personnel to prepare CRMPs; determine the need for and scope of field studies; carry out field, laboratory, and archival studies; and evaluate the potential National Register significance of identified cultural resources. (For guidance in selecting qualified personnel see 36 CFR part 61, Appendix A, Department of Interior, National Park Service, Professional Qualifications Standards.)
- Include federal and state agency officials; SHPOs; THPOs, Native American tribes, or Native American organizations; ACHP; and interested organizations or persons (e.g., local governments; applicants for federal assistance, permits, or licenses; stakeholders) in the section 106 consultation process as specified in NHPA and ARPA and their implementing regulations.
- Facilitate public involvement and participation by consulting with federal, state, and local preservation groups and Native American groups regarding preservation planning decisions.
- Identify places, natural resources, and objects of sacred and religious importance to Native Americans as defined by designated tribal representatives. Consult with Native Americans about the potential impacts of proposed DOE actions on those resources and areas of cultural or religious concern to them. Avoid unnecessary interference with traditional religious practices in accordance with DOE's American Indian and Alaska Native Tribal Government Policy as implemented by DOE Order 1230.2.
- Protect cultural resource sites and, as appropriate, monitor unreported sites. These proactive actions should include compliance with NHPA and ARPA.
- Develop a systematic program to inventory surface and sub-surface cultural resource sites at each DOE facility according to ARPA and section 110 of NHPA. Inventories should include buildings or sites less than 50 years of age that may have significant historical importance.
- Use the National Register of Historic Places criteria in 36 CFR part 60 to evaluate the significance of the identified cultural resources.
- Establish a permitting system for the controlled excavation, removal, and protection of cultural resources during scientific and compliance-oriented field projects as required by ARPA.
- Include sufficient lead time in project planning to meet requirements for field surveys and excavations for cultural resources to comply with section 106 of the NHPA. The time necessary to complete field activities and prepare compliance documents that meet federal standards should be factored into the scheduling of projects that involve ground disturbing activities or modifications to standing structures that are more than 50 years old or those younger than 50 years that are of significant historical importance.
- Budget sufficient funds to support cultural resource compliance actions and programs. (See related EH-41 Information Briefs on *ARPA* and *NHPA*.)
- Protect information concerning the exact location of sensitive cultural resource sites and prohibit the dissemination of such information to the general public in order to prevent looting and vandalism.
- Curate cultural resource collections and records in accordance with the guidance provided in 36 CFR part 79. The public distribution of compliance-related studies and reports must comply with NHPA.
- Identify and repatriate Native American human remains and sensitive cultural items in collections created as a result of past DOE activities as well as from current and proposed activities in accordance with NAGPRA.
- Promptly notify the DOE FPO of unanticipated findings including the inadvertent discovery of

human remains and other objects protected by NAGPRA.

DOE Managers Must Consider Cultural Resources in Planning

DOE managers must follow the planning considerations discussed above whenever direct or indirect DOE activities result in ground disturbance. Those plans must also be followed when activities may result in alterations to standing structures that are more than 50 years old or to those that are less than 50 years old but are important because they represent a major historical theme or era. Managers must ensure compliance for all DOE activities whether or not DOE owns the properties. DOE activities include, but are not limited to, day-to-day operations; new construction; cleanup actions under Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and DOE-licensed and DOE-funded actions. Managers should also ensure that DOE and contractor personnel are aware of amendments to cultural resource statutes (e.g., 1992 amendments to NHPA) and the development of or revision to cultural resources regulations (e.g., those issued to implement NAGPRA).

Penalties for Failing to Protect Cultural Resources

Failure to protect both known and unrecorded cultural resource sites and materials can lead to criminal and civil penalties, including up to five-years imprisonment and a fine of up to \$250,000 per violation, as well as the forfeiture of all equipment and vehicles used to facilitate a violation. [See ARPA and the Omnibus Crime Control Act of 1984 (PL 98-596) and EH-41 Information Brief on *ARPA*.]

Questions of policy or questions requiring policy decisions will not be dealt with in EH-41 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Lois Thompson, Office of Air, Water and Radiation Protection Policy and Guidance, EH-41, (202) 586-9581; fax: (202) 586-3915; e-mail: Lois.Thompson@eh.doe.gov.